

AMENDED IN SENATE JUNE 2, 2005

SENATE BILL

No. 88

Introduced by ~~Committee on Budget and Fiscal Review~~ *Senator
Ducheny*

January 14, 2005

~~An act relating to the Budget Act of 2005.~~ *An act to amend Section 30122 of the Revenue and Taxation Code, relating to fiscal affairs, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 88, as amended, ~~Committee on Budget and Fiscal Review~~ *Ducheny. Budget Act of 2005. Fiscal affairs: health care funding: Proposition 99.*

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2005.~~

The Cigarette and Tobacco Products Tax Law imposes a tax on every distributor of cigarettes and tobacco products at specified rates, including additional taxes imposed under the law enacted by the Tobacco Tax and Health Protection Act of 1988 (Proposition 99) an initiative measure approved by the electorate, November 8, 1988.

Existing provisions of the Cigarette and Tobacco Products Tax Law establishes the Cigarette and Tobacco Products Surtax Fund, consisting of revenues derived from the imposition of the Proposition 99 surtax, and provides that those revenues allocated to the Physician Services Account and the Hospital Services Account in the fund shall be used for the treatment and provision of services to people who cannot afford them and for whom payment will not be made through any program funded in whole or in part by the federal government. The fund also contains the Unallocated Account, from which funds

may be made available for appropriation for any purpose authorized for any of the other accounts contained in the fund.

This bill would eliminate the prohibition against the use of funds in the Physician Services Account and the Hospital Services Account in the fund to provide health services funded through any program funded in part by the federal government.

Proposition 99 prohibits the Legislature from amending provisions of the Cigarette and Tobacco Products Surtax Law except by a $\frac{4}{5}$ vote of the membership of both houses of the Legislature and then only if consistent with the act.

This bill would contain declarations of the Legislature that it is consistent with Proposition 99.

This bill would also appropriate \$3,631,000 from the Hospital Services Account and \$42,473,000 from the Unallocated Account to the State Department of Health Services for 2004-05 fiscal year enhancements to hospital outpatient reimbursement rates under Medi-Cal.

This bill would require the Director of Finance to make all necessary budgetary adjustments to implement the bill and other changes identified in the Governor's 2004-05 fiscal year May Revision.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~ $\frac{4}{5}$. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. It is the intent of the Legislature to enact~~
2 ~~statutory changes relating to the Budget Act of 2005.~~

3 *SECTION 1. The Legislature finds and declares all of the*
4 *following:*

5 *(a) Proposition 99, adopted by the voters in 1988, imposed a*
6 *twenty-five cents (\$0.25) per pack surtax on tobacco products.*
7 *Revenues from this surtax may be appropriated, among other*
8 *things, for medical and hospital care and treatment of patients*
9 *who cannot afford to pay for those services, and for whom*
10 *payment will not be made through any private coverage or by*
11 *any program funded in whole or in part by the federal*
12 *government.*

1 ***(b) Amendments to Proposition 99 must be consistent with its***
2 ***purposes.***

3 ***(c) A primary purpose of Proposition 99 is to expand***
4 ***resources to meet the increasing demand for medical services for***
5 ***the most needy Californians. As stated in the ballot argument,***
6 ***voting yes on Proposition 99 meant a vote “... for medical care***
7 ***for people who cannot afford health care ...” and would provide***
8 ***“... additional resources to care for those in need.”***

9 ***(d) The adoption of Proposition 99 created the Cigarette and***
10 ***Tobacco Products Surtax Fund, consisting of six separate***
11 ***accounts, including the Hospital Services Account, the***
12 ***Physicians Services Account, and the Unallocated Account.***

13 ***(e) Preventing the use of Proposition 99 funds to provide***
14 ***medical care where payment for medical care is made through***
15 ***any program funded in part by the federal government limits***
16 ***California’s ability to fulfill a primary purpose of Proposition 99***
17 ***which is to provide medical care for people who cannot afford***
18 ***health care, and limits available funding to deliver medical care.***

19 ***(f) After the adoption of Proposition 99, California has***
20 ***created or expanded programs that further the purpose of that***
21 ***proposition, including the Access for Infants and Mothers***
22 ***Program. In addition, the federal government created the State***
23 ***Children’s Health Insurance Program, providing new***
24 ***opportunities for states to secure federal funding for health care***
25 ***services, and the state’s ability to receive matching funding for***
26 ***health care programs funded by Proposition 99 would enable it***
27 ***to maximize available resources to provide medical care to more***
28 ***people than could be provided if state funds alone were***
29 ***available.***

30 ***(g) In the 2004-05 fiscal year, Proposition 99 revenues***
31 ***allocated to the Hospital Services Account, the Physician***
32 ***Services Account, and the Unallocated Account will total an***
33 ***estimated \$216,000,000. Proposition 99 originally provided***
34 ***approximately \$570,000,000 for health care related programs.***
35 ***Since that time revenues have declined steadily as the use of***
36 ***tobacco products has diminished due to the success of the***
37 ***antitobacco media campaign and other tobacco control and***
38 ***antismoking efforts. The use of declining Proposition 99 revenues***
39 ***to match federal funding will enable the state to maximize the***
40 ***benefit to the public from a declining revenue stream.***

1 (h) *The appropriation of funds from the Hospital Services*
2 *Account, the Physicians Services Account, and the Unallocated*
3 *Account to pay for the care of persons covered by programs*
4 *funded in part by the federal government would maximize*
5 *utilization of Proposition 99 funds in furtherance of the*
6 *initiative's purpose: to provide medical services to those in need,*
7 *including those in medically underserved areas and rural*
8 *communities.*

9 (i) *The amendment of Proposition 99 to clarify that the*
10 *appropriation of Cigarette and Tobacco Products Surtax Law*
11 *funds in the Hospital Services Account, the Physicians Services*
12 *Account, and the Unallocated Account to pay for the care of*
13 *persons covered by programs funded in part by the federal*
14 *government is consistent with the purposes of Proposition 99.*

15 SEC. 2. *Section 30122 of the Revenue and Taxation Code is*
16 *amended to read:*

17 30122. (a) The Cigarette and Tobacco Products Surtax Fund
18 is hereby created in the State Treasury. The fund shall consist of
19 all revenues deposited therein pursuant to this article. Moneys in
20 the fund may only be appropriated for the following purposes:

21 (1) Tobacco-related school and community health education
22 programs.

23 (2) Tobacco-related disease research.

24 (3) Medical and hospital care and treatment of patients who
25 cannot afford to pay for those services, and for whom payment
26 will not be made through any private coverage or by any program
27 funded in whole ~~or in part~~ by the federal government.

28 (4) Programs for fire prevention; environmental conservation;
29 protection, restoration, enhancement, and maintenance of fish,
30 waterfowl, and wildlife habitat areas; and enhancement of state
31 and local park and recreation purposes.

32 (b) The fund consists of six separate accounts, as follows:

33 (1) The Health Education Account, which shall only be
34 available for appropriation for programs for the prevention and
35 reduction of tobacco use, primarily among children, through
36 school and community health education programs. *Revenues*
37 *from the Health Education Account shall not be used to match*
38 *federal funds for any purpose.*

39 (2) The Hospital Services Account, which shall only be
40 available for appropriation for payment to public and private

hospitals licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code for the treatment of hospital patients who cannot afford to pay for that treatment and for whom payment for hospital services will not be made through private coverage or by any program funded in whole ~~or in part~~ by the federal government.

(3) The Physician Services Account, which shall only be available for appropriation for payment to physicians for services to patients who cannot afford to pay for those services, and for whom payment for physician services will not be made through private coverage or by any program funded in whole ~~or in part~~ by the federal government.

(4) The Research Account, which shall only be available for appropriation for tobacco-related disease research. *Revenues from the Public Research Account shall not be used to match federal funds for any purpose.*

(5) The Public Resources Account, which shall only be available for appropriation in equal amounts for both of the following:

(A) Programs to protect, restore, enhance, or maintain fish, waterfowl, and wildlife habitat on an equally funded basis.

(B) Programs to enhance state and local park and recreation resources.

(6) The Unallocated Account, which shall be available for appropriation for any purpose specified in subdivision (a).

SEC. 3. The following amounts are appropriated from the Cigarette and Tobacco Products Surtax Fund to the State Department of Health Services for the 2004-05 fiscal year for enhancements set forth in subdivisions (m) and (n) of Section 51509 of Title 22 of the California Code of Regulations, as adopted pursuant to the settlement of Orthopaedic Hospital and the California Association of Hospitals and Health System v. Belshe (CV 94-4764), to hospital outpatient reimbursement rates pursuant to subdivision (a) of Section 14132 of the Welfare and Institutions Code, as follows:

(a) From the Hospital Services Account, the amount of three million six hundred thirty-one thousand dollars (\$3,631,000).

(b) From the Unallocated Account, the amount of forty-two million four hundred seventy-three thousand dollars (\$42,473,000).

1 *SEC. 4. Section 2 of this act shall be applied with respect to*
2 *the entire 2004-05 fiscal year and for each fiscal year following*
3 *that fiscal year.*

4 *SEC. 5. No program or service funded through the Budget*
5 *Act of 2004 that receives funding from the Physicians Services*
6 *Account, the Hospital Services Account, or the Unallocated*
7 *Account of the Cigarette and Tobacco Products Surtax Fund*
8 *shall be adversely affected by the receipt of federal funding as a*
9 *result of the implementation of this act.*

10 *SEC. 6. Notwithstanding any other provision of law, the*
11 *Director of Finance shall make all necessary budgetary*
12 *adjustments to implement this act and other changes identified in*
13 *the Governor's May Revision to the Budget Bill for the 2004-05*
14 *fiscal year. Within 30 days of making the adjustments, the*
15 *Director of Finance shall notify the appropriate committees of*
16 *the Legislature of those adjustments.*

17 *SEC. 7. This act is an urgency statute necessary for the*
18 *immediate preservation of the public peace, health, or safety*
19 *within the meaning of Article IV of the Constitution and shall go*
20 *into immediate effect. The facts constituting the necessity are:*

21 *In order that this act is operative for the 2004-05 fiscal year, it*
22 *is necessary that this act take effect immediately.*